

REMARKS

This is a full and timely response to the Office Action mailed June 23, 2003. Reconsideration and allowance of the application and presently pending claims are respectfully requested.

Present Status of Patent Application

Upon entry of the amendments in this response, claims 1-20 remain pending in the present application. More specifically, claims 3, 11 and 16 have been currently amended. Reconsideration and allowance of the application and presently pending claims are respectfully requested.

A. Claim Objections

Claim 3

a) Statement of the Objection

The Office Action indicates that "Claim 3 is objected to because of the following informalities: it depends on itself. Claim 3 is presumed to be dependent on claim 2. Appropriate correction is required."

b) Response to Objection

In response to this objection, claim 3 has been suitably corrected to depend upon claim 2. Consequently, Applicant requests withdrawal of this objection to claim 3.

Claim 16

a) Statement of the Objection

The Office Action states that "Claim 16 is objected to because of the following informalities: "an error condition test" on line 3 of the claim should be "an error condition test". Appropriate correction is required."

b) Response to Objection

In response to this objection, line 3 of claim 16 has been suitably corrected to include "an error condition test". Consequently, Applicant requests withdrawal of this objection to claim 16.

B. Claim Rejections - 35 U.S.C. § 112

Claim 11

a) Statement of the Rejection

Claim 11 has been rejected under 35 U.S.C. § 112, second paragraph, “as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.” The Office Action further states “Claim 11 recites the limitation “to provide error recovery that is inserted in said computer program if error recovery is enabled” on lines 10-11 of the claim. It is unclear as to what is being inserted in the computer program. This limitation is interpreted as “to provide error recovery code that is inserted in said computer program if error recovery is enabled”.”

b) Response to the Rejection

In response to this rejection, claim 11 has been suitably amended. Currently amended claim 11 states in pertinent part “to provide error recovery code that is inserted in said computer program if error recovery is enabled.”

Applicant requests withdrawal of this rejection to claim 11.

C. Claim Rejections - 35 U.S.C. § 102

Claims 1, 4, 6, 9, 11, 14, 16 and 19 have been rejected in the Office Action under 35 U.S.C. 102(b) as being anticipated by *Agarwal* (U.S. 5,966,541).

Claim 1

a) Statement of the Rejection

Claim 1 has been rejected in the Office Action as *Agarwal* allegedly discloses:

- 1) “a method of providing recovery from an error condition in a computer program”
- 2) “parsing a source program for an error condition test; detecting if an error condition test exists in said source program” and
- 3) “determining if error recovery is enabled when said error condition test is detected; creating an error recovery flag code when said error condition test exists and said error recovery is enabled; and inserting error recovery code in the computer program if error recovery is enabled”

b) Response to the Rejection

With reference to the Office Action rejection directed at Applicant’s “parsing a source program for an error condition test; detecting if an error condition test exists in said source program” (Emphasis added), Applicant draws attention to *Agarwal* (col. 4, lines 40 - 43), which

states “The present invention instruments original binary code to create augmented or remedial binary code. The augmented or remediated binary code then perform many useful functions, such as error detecting and repair.” (Emphasis added). Applicant has been unable to find in *Agarwal*, disclosure related to at least, Applicant’s “parsing a source for an error condition test.” Furthermore, Applicant fails to find in *Agarwal* any reference to “an error condition test” that may be located in a source program. It must be pointed out that looking for an error condition, such as disclosed by *Agarwal*, is distinguishable from Applicant’s looking for an error condition test. While *Agarwal* addresses the issue of “determining the source and nature of an error within a computer system” (Emphasis added) as his title suggests, and consequently, as stated in the Office Action, “in determining where to install the software patches,” Applicant’s claim 1 is directed towards “detecting if an error condition test exists in said source program” and consequently “inserting error recovery code in the computer program if error recovery is enabled.”

Applicant respectfully asserts that the Office Action rejection of claim 1 under 35 U.S.C. § 102 is improper because *Agarwal* does not disclose the elements of Applicant’s claim 1. Specifically, *Agarwal* does not at least disclose Applicant’s “detecting if an error condition test exists in said source program.”

Therefore, Applicant requests withdrawal of this rejection to claim 1.

Claim 4

a) Statement of the Rejection

Claim 4 has been rejected in the Office Action as *Agarwal* allegedly discloses “detecting if a call to a subroutine exists in said source program; and creating an error recovery flag test code to test if said error recovery is enabled and said subroutine exists”.

b) Response to the Rejection

Since independent claim 1 is allowable over the prior art references of record, then dependent claim 4 is allowable as a matter of law. *In re Fine*, 837 F.2d 1071 (Fed Cir. 1988).

Furthermore, Applicant has been unable to find in *Agarwal*, at least “creating an error recovery flag test code to test if said error recovery is enabled and said subroutine exists,” which is a part of Applicant’s claim 4.

Accordingly, Applicant requests withdrawal of this rejection to claim 4.

Claims 6 and 9

a) Statement of the Rejection

Claims 6 and 9 have been rejected in the Office Action as “These are system versions of the claimed method discussed above (claims 1 and 4, respectively), wherein all claim limitations also have been addressed and/or covered in cited areas as set forth above. Thus, accordingly, these claims are also anticipated by *Agarwal*.”

b) Response to the Rejection

Claim 6 is an independent means claim, which includes, in pertinent part “means for parsing a source program for an error condition test” and also “means for detecting if an error condition test exists in said source program.” Claim 9 depends on claim 6, and includes, in pertinent part, “means for creating an error recovery flag test code to test if said error recovery is enabled and said subroutine exists.”

Applicant has been unable to find in *Agarwal*, disclosure related to means as stated in Applicant’s claim 6 and/or claim 9. Applicant respectfully suggests that the Office Action has failed to stated where in *Agarwal* a disclosure is provided that is relevant to at least, Applicant’s means of claims 6 and 9. In more specific detail, Applicant has been unable to find in *Agarwal*, at least, Applicant’s “means for parsing a source for an error condition test,” (part of claim 6) and/or “means for creating an error recovery flag test code to test if said error recovery is enabled and said subroutine exists” (part of claim 9). This may be attributed, in part, because *Agarwal* does not have “an error condition test” that may be located in a source program.

Applicant respectfully asserts that the Office Action rejection of claims 6 and 9 under 35 U.S. C. § 102 is improper because *Agarwal* does not disclose the means elements of Applicant’s claims 6 and 9. Therefore, Applicant requests withdrawal of this rejection to claims 6 and 9.

Claims 11 and 14

a) Statement of the Rejection

Claims 11 and 14 have been rejected in the Office Action as “These are system versions of the claimed method discussed above (claims 1 and 4, respectively), wherein all claim limitations also have been addressed and/or covered in cited areas as set forth above. Thus, accordingly, these claims are also anticipated by *Agarwal*.”

b) Response to the Rejection

Claim 11 is an independent system claim, which includes, in pertinent part, “a compiler configured to parse a source program” and “error condition test logic configured to detect whether an error condition test exists in said source program.” Claim 14 depends on claim 11, and includes, in pertinent part, “error recovery flag test code generator that generates code to test if said error recovery is enabled and said subroutine exists.”

Applicant has been unable to find in *Agarwal*, disclosure related to a compiler, and/or error condition test logic, as incorporated in Applicant’s claim 6; and/or “an error recovery flag test code generator” that is part of claim 14. Applicant respectfully suggests that the Office Action has failed to stated where in *Agarwal* a disclosure is provided that is relevant to the elements pertaining to Applicant’s claims 11 and 14. In more specific detail, Applicant has been unable to find in *Agarwal*, at least, Applicant’s “error condition test logic configured to detect whether an error condition test exists in said source program” (part of claim 11).

This may be attributed, in part, because *Agarwal* does not have “an error condition test” that may be located in a source program.

Applicant respectfully asserts that the Office Action rejection of claims 11 and 14 under 35 U.S. C. § 102 is improper because *Agarwal* does not disclose the elements of Applicant’s claims 11 and 14. Therefore, Applicant requests withdrawal of this rejection to claims 11 and 14.

Claims 16 and 19

a) Statement of the Rejection

Claims 16 and 19 have been rejected in the Office Action as “These are computer readable medium versions of the claimed method discussed above (claims 1 and 4, respectively), wherein all claim limitations also have been addressed and/or covered in cited areas as set forth above. Thus, accordingly, these claims are also anticipated by *Agarwal*.”

b) Response to the Rejection

Currently amended claim 16 is an independent computer-readable medium claim, which includes, in pertinent part “logic for parsing a source program for an error condition test” and also “logic for detecting if an error condition test exists in said source program.” Claim 19 depends on claim 16, and includes, in pertinent part, “logic for creating an error recovery flag test code to test if said error recovery is enabled and said subroutine exists.”

Applicant has been unable to find in *Agarwal*, disclosure related to logic as stated in Applicant’s claim 16 and/or claim 19. Applicant respectfully suggests that the Office Action has

failed to stated where in *Agarwal* a disclosure is provided that is relevant to at least, Applicant's logic of claims 16 and 19. In more specific detail, Applicant has been unable to find in *Agarwal*, at least, Applicant's "logic for parsing a source for an error condition test," (part of claim 16) and/or "logic for creating an error recovery flag test code to test if said error recovery is enabled and said subroutine exists" (part of claim 19). This may be attributed, in part, because *Agarwal* does not have "an error condition test" that may be located in a source program.

Applicant respectfully asserts that the Office Action rejection of claims 16 and 19 under 35 U.S. C. § 102 is improper because *Agarwal* does not disclose the means elements of Applicant's claims 16 and 19. Therefore, Applicant requests withdrawal of this rejection to claims 16 and 19.

D. Claim Rejections – 35 U.S.C. § 103

Claims 2-3, 5, 7-8, 10, 12-13, 15, 17-18 and 20 are rejected "under 35 U.S.C. § 103(a) as being unpatentable over *Agarwal* (U.S. 5,966,541) in view of *Brunmeier* (U.S. 5,511,164)."

Claim 2

a) Statement of the Rejection

Claim 2 has been rejected in the Office Action, which states "The rejection of claim 1 is incorporated, and *Agarwal* further teaches generating code to perform said error condition test if said error condition test exists (column 10, lines 10-25).

b) Response to Rejection

Attention is drawn to MPEP 706.2(j) *Contents of a 35 U.S.C. 103 Rejection*, which states in pertinent part:

To establish a *prima facie* case of obviousness, three basic criteria must be met. First, there must be some suggestion or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to modify the reference or to combine reference teachings. Second, there must be a reasonable expectation of success. Finally, the prior art reference (or references when combined) must teach or suggest all the claim limitations. The teaching or suggestion to make the claimed combination and the reasonable expectation of success must both be found in the prior art and not based on applicant's disclosure. *In re Vaack*, 947 F.2d 488, 20 USPQ2d 1438 (Fed. Cir. 1991). See MPEP § 2143 - § 2143.03 for decisions pertinent to each of these criteria.
(Emphasis added)

Agarwal (col. 10, lines 10-25) teaches "binary rewriting 85, 87, 89," which is one of the steps (step 5) for data remediation (refer *Agarwal* col. 7, lines 50-57). Applicant respectfully asserts that *Agarwal* does not teach at least, Applicant's claim 2 that states in pertinent part,

“generating code to perform said error condition test if said error condition test exists” (Emphasis added). Additionally, as pointed out in the Office Action, *Agarwal* “does not explicitly teach program abort code if said error condition test exists and error recovery is not enabled.” The Office Action further alleges that *Brunmeier* teaches “creating program abort code if said error condition test exists and error recovery is not enabled (col. 30, lines 25-27).” While *Brunmeier* (col. 30, lines 25-27) may teach “program abort code” as alleged in the Office Action, Applicant wishes to point out that the Office Action appears to be confusing the presence and/or operation of such code in *Agarwal* and/or *Brunmeier*, with Applicant’s “detecting if an error condition test exists in said source program.” (Emphasis added) as stated in independent claim 1 from which claim 2 is dependent.

Consequently, Applicant respectfully asserts that prior art references *Agarwal* and *Brunmeier* do not teach or suggest all of Applicant’s claim 2 limitations.

Furthermore, Applicant respectfully asserts that the Office Action rejection of claim 2 under 35 U.S.C. 103(a) is improper because neither *Agarwal* nor *Brunmeier* expressly or impliedly provide some suggestion or motivation to one of ordinary skill in the art, to modify either reference or to combine the two references. In this regard, the Office Action states in pertinent part that “It would have been obvious to one of ordinary skill in the computer art at the time of the invention was made to modify the method disclosed by *Agarwal* to include creating program abort code if said error condition test exists and error recovery is not enabled using the teaching of *Brunmeier*. The modification would be obvious because one of ordinary skill in the art would be motivated to exit a program if a fatal error is detected.” (Emphasis added).

While such a motivation may be applicable if a fatal error is detected in a program, *Agarwal* does not provide a motivation to create program abort code based on the existence of an error condition test, such as the test that is detected upon Applicant’s “parsing a source program for an error condition test” (pertinent part of Applicant’s independent claim 1).

Applicant notes with regret that the Office Action does not indicate where a teaching or suggestion of the above-quoted motivation may be found in the cited references. Even if such a reason were to exist, Applicant submits, as explained earlier, that the combination of cited references fails to disclose, teach or suggest each element in claim 2.

Applicant respectfully asserts that the Office Action rejection of claim 2 under 35 U.S.C. 103(a) is improper because *Agarwal* does not provide suggestion or motivation to modify the reference or to combine reference teachings; nor does the proposed combination of *Agarwal* and

Brunmeier expressly teach or suggest all of the Applicant's claim limitations. Consequently, Applicant requests withdrawal of this rejection to claim 2.

Claim 3

a) Statement of the Rejection

Claim 3 has been rejected in the Office Action, which states "The rejection of claim 2 is incorporated, *Brunmeier* further teaches generating code to conditionally skip said program abort code and said error recovery flag code when said error condition test exists and said error recovery is not enabled (column 30, lines 25-27).

b) Response to the Rejection

Currently amended claim 3 depends on claim 2, which is dependent on claim 1. Since independent claim 1 and dependant claim 2 are allowable over the prior references of record, then dependent claim 3 is also allowable as a matter of law. *In re Fine*, 837 F. 2d 1071 (Fed. Cir. 1988)

Furthermore, Applicant submits that the Office Action rejection of claim 3 under 35 U.S.C. 103(a) is improper because the proposed combination of *Agarwal* and *Brunmeier* do not at least expressly teach or suggest all of Applicant's claim limitations. Specifically, the proposed combination does not teach or suggest at least Applicant's "generating code to conditionally skip said program abort code and said error recovery flag code when said error condition test exists and said error recovery is not enabled." (Emphasis added)

Consequently, Applicant requests withdrawal of this rejection to claim 3.

Claim 5

a) Statement of the Rejection

Claim 5 has been rejected in the Office Action, which states, "The rejection of claim 4 is incorporated, and further, *Agarwal* does not explicitly teach generating code to conditionally skip said program abort code and said error recovery flag test code when said error condition test exists and said error recovery is not enabled. *Brunmeier* teaches generating code to conditionally skip said program abort code and said error recovery flag test code when said error condition test exists and said error recovery is not enabled (column 30, lines 25-27)."

b) Response to the Rejection

Claim 5 depends on claim 4, which is dependent on claim 1. Since independent claim 1 and dependant claim 4 are allowable over the prior references of record, then dependent claim 5 is also allowable as a matter of law. *In re Fine*, 837 F. 2d 1071 (Fed. Cir. 1988).

Consequently, Applicant requests withdrawal of this rejection to claim 5.

Claims 7, 8, & 10

a) Statement of the Rejection

Claims 7, 8, and 10 have been rejected in the Office Action as “These are system versions of the claimed method discussed above (claims 2, 3 and 5, respectively), wherein all claim limitations also have been addressed and/or covered in cited areas as set forth above. Thus, accordingly, these claims are also obvious.”

b) Response to the Rejection

Claims 7, 8, and 10 depend directly or indirectly on independent claim 6. Since independent claim 6 is allowable over the prior references of record, then dependent claim 7, 8, and 10 are also allowable as a matter of law. *In re Fine*, 837 F. 2d 1071 (Fed. Cir. 1988).

Consequently, Applicant requests withdrawal of this objection to claims 7, 8 and 10.

Claims 12, 13, & 15

a) Statement of the Rejection

Claims 12, 13, and 15 have been rejected in the Office Action as “These are system versions of the claimed method discussed above (claims 2, 3 and 5, respectively), wherein all claim limitations also have been addressed and/or covered in cited areas as set forth above. Thus, accordingly, these claims are also obvious.”

b) Response to the Rejection

Claims 12, 13, and 15 depend directly or indirectly on independent claim 11. Since independent claim 11 is allowable over the prior references of record, then dependent 12, 13, and 15 are also allowable as a matter of law. *In re Fine*, 837 F. 2d 1071 (Fed. Cir. 1988).

Consequently, Applicant requests withdrawal of this rejection to claims 12, 13, and 15.

Claims 17, 18, & 20

a) Statement of the Rejection

Claims 17, 18, and 20 have been rejected in the Office Action as “These are system versions of the claimed method discussed above (claims 2, 3 and 5, respectively), wherein all claim limitations also have been addressed and/or covered in cited areas as set forth above. Thus, accordingly, these claims are also obvious.”

b) Response to the Rejection

Claims 17, 18, and 20 depend directly or indirectly on independent claim 16. Since independent claim 16 is allowable over the prior references of record, then 17, 18, and 20 also allowable as a matter of law. *In re Fine*, 837 F. 2d 1071 (Fed. Cir. 1988).

Consequently, Applicant requests withdrawal of this rejection to claims 17, 18, and 20.

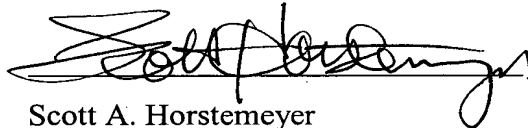
Prior Art Made of Record

The prior art made of record has been considered, but is not believed to affect the patentability of the presently pending claims.

CONCLUSION

In light of the foregoing amendments and for at least the reasons set forth above, Applicant respectfully submits that all objections and/or rejections have been traversed, rendered moot, and/or accommodated, and that claims 1-20 are in condition for allowance. Favorable reconsideration and allowance of the present application and all pending claims are hereby courteously requested. If, in the opinion of the Examiner, a telephonic conference would expedite the examination of this matter, the Examiner is invited to call the undersigned attorney at (770) 933-9500.

Respectfully submitted,



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